

STATE OF MICHIGAN
COURT OF APPEALS

FRANK J. NOA,

Plaintiff-Appellee,

v

M & M ENTERPRIZES, INC.,

Defendant-Appellant.

UNPUBLISHED

January 12, 2001

No. 218819

Otsego Circuit Court

LC No. 98-007750-AV

Before: Talbot, P.J., and Hood and Gage, JJ.

PER CURIAM.

In this summary proceeding to recover the possession of property sold pursuant to a land contract, defendant appeals by leave granted from a circuit court opinion and order vacating a district court judgment. We reverse and remand for entry of judgment in favor of defendant.

This appeal involves the conveyance of real property on the Sturgeon River that was owned solely by Agatha Noa until 1990, when she quitclaimed the parcel to her sons, Frank Noa and Michael Noa, as joint tenants, retaining a life estate for herself. Pursuant to a later power of attorney signed by Frank Noa and Michael Noa, Agatha Noa sold the property to defendant M & M Enterprizes, of which Michael is an officer and fifty-percent shareholder. Plaintiff subsequently revoked the power of attorney and filed summary proceedings in the district court for forfeiture of the land contract pursuant to MCL 600.5701 *et seq.*; MSA 27A.5701 *et seq.* The district court's inquiry was confined to whether payments had been made on the land contract. The parties did not challenge the validity of the power of attorney or the land contract in the district court. The district court ruled in favor of plaintiff, and defendant then appealed to the circuit court. The circuit court determined that the power of attorney was of no legal consequence because it purported to give Agatha rights which she already enjoyed, and that the land contract should be set aside because it did not intend to convey Agatha's life estate in the property, nor to convey plaintiff's and Michael's remainder interests. The circuit court nullified the power of attorney and the land contract.

The circuit court's conclusions of law are reviewed de novo. *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). The existence of a default under a contract is a question of fact. *State-William Partnership v Gale*, 169 Mich App 170, 176;

425 NW2d 756 (1988). Factual findings are clearly erroneous if there is no evidence to support them or there is evidence to support them but this Court is left with a definite and firm conviction that a mistake has been made. *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999); *Featherston v Steinhoff*, 226 Mich App 584, 588, 575 NW2d 6 (1997).

Summary proceedings to recover possession of premises are specifically permitted by the Revised Judicature Act and are under the jurisdiction of Michigan's district courts. MCL 600.5704; MSA 27A.5704. These proceedings include actions for the return of property sold pursuant to a land contract, if forfeiture is permitted by the terms of the contract. MCL 600.5726; MSA 27A.5726. The statute provides that summary proceedings for possession of premises are subject to appeal to the circuit court as provided in the court rules. MCL 600.5753; MSA 27A.5753. See also MCR 7.101. Here, the circuit court was not asked to address the issue of the validity of the power of attorney or the land contract. However, the circuit court had the power to correct a perceived error of law by the district court. See *Portell v Feldman*, 354 Mich 611, 612-614; 93 NW2d 305 (1958).

Powers of attorney are strictly construed and cannot be enlarged by construction. *Bergman v Dykhouse*, 316 Mich 315, 319; 25 NW2d 210 (1946); *Crane v Kangas*, 53 Mich App 653, 654; 220 NW2d 172 (1974). Further, the authority to sell real estate must be conferred in clear and direct language and may not be inferred. *Id.* An agent acting under a power of attorney may only perform those acts specified within the power of attorney. *Id.*

Here, the power of attorney provided, in pertinent part, that Frank J. Noa and Michael J. Noa appointed Agatha Noa as their attorney, "for us and in our name . . . to grant, bargain, sell and convey the [property]," and "in our name . . . to make, execute, acknowledge and deliver, a good and sufficient deed of coveyance [sic] for the same," and it gave Agatha full power and authority to perform any act necessary "as fully to all intents and purposes, as we ourselves might or would do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our attorney or her substitute shall lawfully do or cause to be done by virtue hereof." The power of attorney further allowed Agatha to "apply the balance of said proceeds to her own use and account[.]"

Agatha had the power to sell her life estate interest in the property. Case law clearly holds that a life tenant's estate is freely alienable. *Albro v Allen*, 434 Mich 271, 281; 454 NW2d 85 (1990). The language of this power of attorney encompasses more than just Agatha's interest. Instead, the power of attorney specifically authorizes Agatha to perform acts in Frank and Michael Noas' names, including selling the property, and again in Frank and Michael Noas' names, to execute deeds conveying the property.¹ The power of attorney here is nearly identical to the one in *Skuta v Hribek*, 3 Mich App 633, 635; 143 NW2d 157 (1966). There, the Supreme Court ruled that the power of attorney permitted the plaintiff to dispose of property pursuant to the decedent's wishes. *Id.* at 635. Like the power of attorney in *Skuta*, the power of attorney

¹ While the power of attorney is broad, it cannot itself be deemed a conveyance of the property. MCL 565.35; MSA 26.552.

here contains such broad language that it permits Agatha to do what she wished with the property and the proceeds.

The sheer breadth of this power of attorney permitted Agatha to sell the property and to use the proceeds for her own benefit. Agatha sold the property to defendant by land contract. In lieu of cash payments, Agatha credited defendant with amounts owed by Agatha to Michael for improvements he had made to the property. Agatha testified that defendant was not delinquent on the land contract in any way. Because the land contract was executed pursuant to the power of attorney and Agatha was solely entitled to the proceeds of the sale, plaintiff lacks standing to challenge the payments on the land contract. The district court clearly erred in finding that payments had not been made on the land contract.

The circuit court erred in both failing to recognize that the power of attorney authorized Agatha's actions and in failing to uphold her sale to defendant. The court improperly focused upon the revocability of the power of attorney. Plaintiff's revocation of his power of attorney is irrelevant because Agatha sold the property during the efficacy of the document, prior to any attempted revocation. The power of attorney clearly permitted Agatha to sell the property, and plaintiff's subsequent revocation of the power of attorney does not operate to invalidate the conveyance. Additionally, plaintiff's interest was a vested remainder, which would not become possessory until Agatha's death. During her lifetime, Agatha has the power to convey her life estate in the property. The revocability of the power of attorney is not relevant because the document clearly permitted Agatha's sale of the property, which occurred months before the revocation. With regard to this sale, the revocation was a nullity.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Harold Hood

/s/ Hilda R. Gage